IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1297 OF 2007

M/s. Alliance Engg. Co., Dombivli (E)... Petitioner

versus

u. Mukundan Nair, Dombivli (E)..... Respondent.

Shri V.K.Pradhan forthe petitioner
Shri Ravindra Nair for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 9TH MARCH, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present respondent no.1 was an employee working with the petitioner company. He retired from service in the year 2002. Sometime in the year 2005 a reference order has made and the dispute is referred for adjudication to the labour court which came to be registered as reference no.396 of 2005. The claim statement came to be filed by respondent no.1 on 21-3-2006. Thereafter the petitioner went on seeking adjournment for filing of written statement. In all five adjournments came to be granted by labour court which was covering a period of about six months. Ultimately yet another application was moved on 15-12-2006, seeking adjournment and the said

application has been rejected and no W.S. order came to be passed.

3. On the next date the petitioner placed the written statement on record and made a prayer that no written statement order be set aside and the written statement so filed be taken on record.

4. The application was rejected and the labour court by an order dated 16-1-2007 has directed the matter to proceed without considering the written statement produced on record by the petitioner. The petitioner challenges this order dated 16-1-2007 which declines to set aside the no W.S. order and refuses to consider the written statement filed by the petitioner.

5. The learend counsel appearing for the petitioner submits that utmost pejudice would be caused if the impugned order is not set aside, in as much as the unsustainable claim made by the respondent no.1 would stand allowed without any contest. The learned counsel further tried to canvass that the employee, had retired in the year 2002 and the record of the said employee pertains to the year 1977. As the entire record was not available, the petitioner could not prepare and file the written statement in time. In the submission of the learned counsel for the

petitioner, ends of justice could be met by saddling costs on the petitioner for the delay that has been caused in filing written statement. The learned counsel for the respondent no.1 justifies the orders passed by the labour court and submits that enough opportunity was granted to file written statement and the orders impugned does not call for any interference in exercise of writ jurisdiction. Alternatively, it is submitted that if at all the petitioner is to be permitted to file written statement then it should be subject to heavy costs.

5. Having regard to the totality of the facts and circumstances, I am of the clear view that adjudication of the matter on merit would be in furtherence of cause of justice. For non filing of the written statement within the time permitted by the trial court, the petitioner needs to be saddled with costs. I therefore proceed to allow the writ petition.

6. The impugned order passed by the labour court dated 17-1-2007 refusing to set aside no W.S.Order so also refusing to take into consideration the written statement tendered by the petitioner for consideration, is quashed and set aside. The prayers made by the petitioner in its application dated 16-1-2007 stands granted subject to the condition that

the petitioner shall pay costs in the sum of Rs. 10,000/- to the respondent no.1 within four weeks from today. The counsel for the parties assure this court that no further adjournment would be sought before the Labour court. Thus I hope and trust that the labour court will proceed to decide the reference as expeditiously as possible. Rule made absolute in above terms.

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